



# **SUPREME COURT OF THE UNITED STATES**

**October Term 1979**

**No. 79-534**

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**JAMES HERBERT PARRISH       -       -       -       Petitioner**

*versus*

**COMMONWEALTH OF KENTUCKY       -       Respondent**

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**On Petition for a Writ of Certiorari to the  
Supreme Court of Kentucky**

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## **REPLY TO RESPONDENT'S BRIEF IN OPPOSITION**

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**FRANK E. HADDAD, JR.**  
529 Kentucky Home Life Building  
Louisville, Kentucky 40202  
(502) 583-4881

*Counsel for Petitioner*

*Of Counsel:*

**WILLIAM E. RUEFF**  
Warren and Ohio Streets  
Morgantown, Kentucky 42261

November 7, 1979

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JAMES HERBERT PARRISH       -       -       -       *Petitioner*

COMMONWEALTH OF KENTUCKY       -       -       *Respondent*

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## REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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In its Brief in Opposition, the respondent has *first* raised an argument which merits response. Respondent suggests that the singling out of persons who use firearms in the commission of a felony is a sufficient basis to deny probation, shock probation, or conditional discharge. Respondent is, in essence, suggesting that K.R.S. 533.060 is not in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Moreover, respondent asserts that the singling out by the legislature of those persons who commit felony offenses involving the use of a weapon from which a shot or projectile may be discharged, capable of producing death or other serious physi-

cal injury, is a sufficient basis to deny probation as well as shock probation and conditional discharge. [Respondent's Brief, p. 11.]

Petitioner submits that there is *no* rational basis for *summarily* denying probation to an individual convicted of a Class A, B or C felony on the basis that a firearm was employed in the commission of the crime. Petitioner submits that K.R.S. 533.060 is, in fact, totally *irrational* and, therefore, violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

This Court has held that under a traditional equal protection analysis, a statute enacted by the legislature cannot be sustained unless it is rationally related to and in furtherance of a legitimate governmental interest.

Under traditional equal protection analysis, a legislative classification must be sustained if the classification itself is rationally related to a legitimate governmental interest.

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Thus, if it is to be sustained, the challenged classification must rationally further some legitimate governmental interest other than those specifically stated in the congressional "declaration of policy." [Citation omitted.] *U. S. Dept. of Agriculture v. Moreno*, 413 U. S. 528, 37 L. Ed. 2d 782, 787, 788, 93 S. Ct. 2821 (1973).

Petitioner submits that K.R.S. 533.060 is in violation of the Equal Protection Clause for two reasons. First, the statute is not rationally related to the furtherance

of any governmental interest. On the contrary, this statute is totally *irrational*, since it makes no measurable contribution to the acceptable goals of punishment and veritably frustrates the cornerstone of our system of criminal justice, rehabilitation of the convicted.

Unquestionably, probation is a most desirable disposition to be used in most cases, since, among other things, it promotes the rehabilitation of the offender by continuing normal community contacts and avoids the negative effects of confinement which complicate the reintegration of the offender into the community.

#### 1.2 Desirability of probation.

Probation is a desirable disposition in appropriate cases because:

\* \* \*

(ii) it affirmatively promotes the rehabilitation of the offender by continuing normal community contacts;

(iii) it avoids the negative and frequently stultifying effects of confinement which often severely and unnecessarily complicate the reintegration of the offender into the community.

*A.B.A. Standards for Criminal Justice*, Probation, §1.2, p. 27.

Probation often will offer far more meaningful possibilities for rehabilitation than will other sentencing alternatives, *particularly in the case of first offenders*. *A.B.A. Standards, supra, Commentary*, p. 28.

Petitioner submits that K.R.S. 533.060 is *irrational* since it ignores this premier and fundamental concept

of rehabilitation through probation by summarily denying probation to this Petitioner, a first-time offender, and others similarly situated. Petitioner suggests that a more rational legislative approach, to deter the use of firearms in Class A, B, or C felonies would be to increase the length of punishment for those offenses. This approach would, in effect, increase the penalty, thereby deterring the crime, but yet would *not* obstruct the government's interest in rehabilitating the convicted through probation. This approach would not frustrate the immeasurable contribution that probation makes to our system of criminal justice.

Secondly, K.R.S. 533.060 is in violation of the Equal Protection Clause since it *irrationally* denies probation only to those persons who have employed the use of a firearm in the commission of a Class A, B, or C felony. In its Opinion, the Supreme Court of Kentucky attempted to justify the statute on the basis that firearms are inherently more dangerous to human lives than other weapons.

Firearms are inherently more dangerous to human life than other weapons . . . .

[Appendix A, p. 29.]

Petitioner submits that such a justification is *irrational* since firearms are no more dangerous to human life than axes, butcher knives, bow and arrows, or ice picks. It seems inherently illogical and fundamentally unfair for an individual convicted of murdering by ax or butcher knife to have an opportunity at probation, when that same opportunity is summarily denied another because of the type of weapon employed in the

commission of the crime. Some of history's most heinous crimes have been committed with knives and axes. Under Kentucky law, Jack the Ripper would have been eligible for probation whereas Petitioner, a law-abiding and upstanding member of the community for over twenty-nine (29) years, is automatically and summarily denied probation.

In conclusion, Petitioner submits that K.R.S. 533.060 is irrational, and, therefore, violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution for two reasons. First, the statute makes no measurable contribution to acceptable goals of punishment. On the contrary, the statute frustrates the goal or cornerstone of our system of criminal justice, rehabilitation of the convicted through probation. Secondly, it is irrational to grant probation to an individual who commits a Class A, B, or C felony, by the use of a butcher knife, ax, bow and arrow, poison or other weapon, and summarily deny probation to one who employs a firearm in the commission of the crime. For the reasons enumerated in our Petition and for those reasons hereinabove stated, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

FRANK E. HADDAD, JR.  
529 Kentucky Home Life Building  
Louisville, Kentucky 40202  
(502) 583-4881

*Counsel for Petitioner*

*Of Counsel:*

WILLIAM E. RUEFF  
Warren and Ohio Streets  
Morgantown, Kentucky 42261